

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

RECEIVED

DEC 11 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Satellite Delivery of Network Signals
to Unserved Households for Purposes of
the Satellite Home Viewer Act

Part 73 Definition and Measurement
of Signals of Grade B Intensity

CS Docket No. 98-201
RM No. 9335
RM No. 9345

COMMENTS OF CEDAR RAPIDS TELEVISION COMPANY

Cedar Rapids Television Company ("CRTC"), by its attorneys, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking ("Notice") in the above-referenced proceeding. As licensee of Cedar Rapids, Iowa television station KCRG-TV (Channel 9, ABC), CRTC's principal concern with the rule changes proposed in this proceeding is the impact that such changes will have on local broadcasters' ability to reach their local viewing audiences over-the-air with valuable local news and information.

1. Introduction

The 1988 Satellite Home Viewer Act ("SHVA"), 17 U.S.C. § 119 (1998), defines an "unserved" household (and thus one that is entitled to receive DBS feeds of distant network stations' programming) as a household that cannot receive a "Grade B" signal. Under the FCC's current Grade B standard, a broadcast station's Grade B over-the-air signal is one that produces an acceptable picture that can be received by at least 50 percent of the audience 50 percent of the

No. of Copies rec'd
List ABCDE

0113

time.¹ The Notice proposes to redefine this standard to reflect reception by 50 percent of the audience more than 90 percent of the time.² While this proposal is short of Grade A signal strength (reception of an acceptable picture by 70 percent of the audience 90 percent of the time) and the even more draconian 99 percent and 100 percent reception proposals of EchoStar and the NRTC, redefining a Grade B signal to the new standard would drastically erode local television station audiences as shown in Longley-Rice maps submitted by the National Association of Broadcasters (“NAB”) and other commenters in response to petitions that EchoStar and the National Rural Telecommunications Cooperative (“NRTC”) filed to seek Commission action of the sort being proposed in this proceeding.³ The overly broad definitions of “unserved household” resulting from the changes to Grade B signal strength, as proposed by the Notice, EchoStar, and the NRTC, disregard Congress’ intent in adding the “white area” exception to the SHVA. In keeping with fundamental tenets of copyright law (and the SHVA is, after all, part of the Copyright Act), Congress kept the DBS compulsory license narrowly confined. The statutory limitations on the license were lifted to cover only “*a small percentage of television*

¹ See 47 C.F. R. § 73.683(a); *CBS, Inc. v. Primetime 24 Joint Venture*, 9 F.Supp.2d 1333, 1339 (S.D. Fla. 1998) (“[T]he plain language of the [SHVA] adopts the FCC’s definition of a grade B signal (an objective test) to determine whether a household is an “unserved household.””)

² Notice ¶ 32.

³ See EchoStar Petition for Declaratory Ruling and/or Rulemaking of Echostar Communications Corporation at 29; Emergency Petition for Rulemaking of the National Rural Telecommunications Cooperative at iii, 19; See also Notice ¶ 9.

*households [that] cannot now receive clear signals embodying the programming of the three national television networks.”*⁴

2. Local Broadcasters Provide a Unique Service to the Community That Will Be Jeopardized by Any Redefinition of Unserved Households.

The Commission itself has expressed concern lest it overstep its boundaries in altering the current Grade B and thereby expand the universe of “unserved” households beyond what Congress intended in the SHVA.⁵ Apart from this potential problem (and the equally valid concern that satellite providers that acted in bad faith by transmitting distant network signals to customers in served households will benefit as a result of their illegal activities),⁶ CRTC opposes the proposed changes because they are likely to place broadcasters’ ability to serve their local markets in jeopardy.

CRTC's KCRG-TV, like many broadcast network affiliates, provides to its audience an array of services that is unique in its market. KCRG-TV is a free service offering information as to local events

⁴ House Judiciary Committee Report, H.R. Rep. No. 100-887, pt. 1, at 18 (emphasis added)

⁵ Two separate House Committee Reports pertaining to the 1988 SHVA expressly state that the “white area exception” was enacted “in recognition of the fact that *a small percentage of television households* cannot now receive clear signals embodying the programming of the three national television networks.” House Judiciary Committee Report, H.R. Rep. No. 100-887, pt. 1, at 18 (emphasis added), *reprinted in* 1988 U.S.C.C.A.N. 5611, 5621; *accord* House Energy and Commerce Committee Report, H.R. Rep. No. 100-887, pt. 2, at 19 (1988) (emphasis added), *reprinted in* 1988 U.S.C.C.A.N. 5638, 5648. Further, the House Energy and Commerce Committee expressly characterized these unserved white areas as “typically rural.” *Id.* Congress repeated this characterization in enacting the Satellite Home Viewer Act of 1994 [the “1994 SHVA”], Pub. L. No. 103-369 § 2, 108 Stat. 3477 (1994). At that time, the Senate Judiciary Committee reported that it “is especially aware of the importance of home satellite viewing to households in *rural areas*.” S. Rep. No. 103-407, at 8 (1994) (emphasis added); Notice ¶ 2.

⁶ *See, e.g.,* “Broadcasters Give DBS a Reprieve,” *The Hollywood Reporter*, August 31, 1998; “Injunction and Summary Judgment Entered Against Primetime 24,” *Satellite Week*, July 20, 1998; Notice ¶ 15.

and topics of vital local interest. KCRG-TV is a source of news, weather, and sports coverage to 33 counties and approximately 1,000,000 persons in Eastern Iowa, Southwestern Wisconsin, and Northwestern Illinois. The station programs more than 24 hours of news each week. KCRG-TV is well equipped technically with such equipment as Doppler radar, but more important is its approach to coverage of severe weather incidents. Whenever severe weather threatens anywhere in its DMA, KCRG-TV is pledged to be the first station on and the last station off the coverage.

KCRG-TV has been honored with more than one hundred state, local, national, and international awards for news coverage and special programming. Particularly significant was its 1998 award from the Associated Press for Best Newscast in Iowa. KCRG-TV's news coverage is not limited to events in Cedar Rapids itself. Indeed, it maintains a bureau in Dubuque and a studio in Iowa City. In recent months the station has sent news crews to locations between its Grade A and Grade B contours to cover matters of local importance, a small sampling of which includes: Fire safety in Crawford County, Wisconsin schools; flooding along the Mississippi near Dubuque; storm damage in Chickasaw County, Iowa; a school board vote in Decorah, Iowa; employment in Keokuk County, Iowa; a bond vote in Washington County, Iowa; and an encephalitis scare in Allamakee County, Iowa. These are locations that could be redefined out of Grade B status, and, thus, viewers in these areas would miss out on important local news coverage.

Moreover, for eight years CRTC's "Show You Care" community service campaign has provided help and hope to needy families in each of CRTC's 33 counties. CRTC secures coats for children in winter, food for the poor, and shelter for the homeless. Viewers are encouraged to assist, for example, by donating blood and becoming volunteers for community organizations. KCRG-TV's "Nine Who Care" awards honor outstanding volunteers from throughout the viewing area.

In its current incarnation, the SHVA grants DBS providers a copyright license to transmit distant network signals that do not contain these valuable local services. While distant network signals are of course better than no signal at all, local stations such as KCRG-TV unquestionably provide the highest value service to households within their markets. Should the Commission accept a more expansive definition of unserved households under the SHVA and allow DBS providers to transmit distant network signals to households that can receive local signals with the proper antenna,⁷ many local viewers will be denied the kinds of local programming and information that KCRG-TV provides. With the loss of audience mass and the corresponding loss of advertising revenues, not only will the households that subscribe to satellite delivery systems be deprived of the local service, but local service for all households in the redefined communities will be reduced. The definition of unserved households therefore should be as narrow as possible, to favor the possible reception of local network signals and programming over a compulsory license for distant network signals where such reception is not strictly needed. Moreover, it would be particularly inappropriate now -- at a time when there exist legislative proposals and technological advances that more easily could resolve the problems -- to rely instead on a forced redefinition of a long accepted standard.

⁷ The Notice also requests comment on the methodology for measuring signal strength at individual locations. In this regard, CRTC takes issue with testing procedures proposed by EchoStar and described in the Notice at ¶ 9. Specifically, to assume that most rooftop antennas are not equipped with rotor capability or to assume that viewers are unwilling to or incapable of changing an antenna's direction seems quite unrealistic. Nor is it reasonable to base the standard on the lowest quality equipment or the most egregious signal attenuation due to use of an excessive number of splitters.

3. Conclusion

For the forgoing reasons, CRTC urges the Commission to refrain from altering the current Grade B standard and to reject suggested revisions to individual measurement procedures. In the alternative, the Commission should craft rules which would provide the greatest possible local service to households and allow distant signal retransmission only where local service truly is unavailable.

Respectfully submitted,

CEDAR RAPIDS TELEVISION COMPANY

By: 

Jerry V. Haines
Donna C. Gregg
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, DC 20006
202-429-7000

Its Attorneys

December 11, 1998

DECLARATION OF JOHN W. PHELAN

I, John W. Phelan, Vice President and General Manager of Cedar Rapids Television Company, do hereby affirm that I have read the attached comments and verified, to the best of my knowledge, the factual statements contained therein. I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 11th day of December, 1998.


John W. Phelan